

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **March 14, 2006**

AGENDA ITEM NO.: 8

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Adoption of an Ordinance Granting a Franchise to Mid-Atlantic Broadband Cooperative to Install, Maintain and Operate Fiber Optic Lines and a Fiber Optic Node/Hub and Related Facilities at Lynchburg Regional Airport**

RECOMMENDATION: Adopt the proposed ordinance.

SUMMARY: Council was originally briefed on this matter during its January 25, 2006 work session. A copy of the original staff report is attached. A franchise agreement with Mid-Atlantic Broadband has been developed and advertised. At the beginning of its meeting on Tuesday Council will receive a proposal from Mid-Atlantic and any other party that wishes a similar franchise. Assuming that no other party submits a proposal or bid, Council will be asked to adopt the proposed ordinance as a matter of General Business.

The FAA has approved the installation of the facilities at the airport as shown on the attached site plans.

PRIOR ACTION(S): January 25, 2006 Work Session

FISCAL IMPACT: N/A

CONTACT(S): Kimball Payne, 455-3990

ATTACHMENT(S): January 24, 2006 Council Report, proposed ordinance, FAA Approval Letter, Site Plans

REVIEWED BY: lkp

AN ORDINANCE GRANTING A FRANCHISE TO THE MID-ATLANTIC BROADBAND COOPERATIVE, A VIRGINIA NON-STOCK COOPERATION, TO INSTALL, MAINTAIN AND OPERATE FIBER OPTIC LINES AND A FIBER OPTIC NODE/HUB AND RELATED FACILITIES ON PROPERTY LOCATED AT THE LYNCHBURG REGIONAL AIRPORT, FOR A PERIOD OF FORTY YEARS BEGINNING ON MARCH , 2006 AND ENDING ON MARCH , 2046.

WHEREAS, the CITY OF LYNCHBURG, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as “City,” is the owner of a certain facility known as the Lynchburg Regional Airport located in Campbell County Virginia; and,

WHEREAS, the MID-ATLANTIC BROADBAND COOPERATIVE, a Virginia non-stock corporation, hereinafter referred to as “Mid-Atlantic,” was formed for the purpose of installing, maintaining and operating a fiber optic system to serve Virginia’s tobacco communities; and,

WHEREAS, Mid-Atlantic has requested a franchise to install, operate and maintain fiber optic lines, a fiber node/hub and related facilities on property owned by the City at the Lynchburg Regional Airport and the City is willing to allow Mid-Atlantic to install, operate and maintain fiber optic facilities on a portion of the Airport property in accordance with the terms hereinafter set forth in this Agreement of Franchise, hereinafter referred to as the “Franchise.”

WHEREAS, the installation and operation of the fiber optic facilities will allow internet service providers (ISPs) to provide the occupants of a proposed joint

industrial/commerce park that is being planned by the City of Lynchburg and Campbell County with internet access providing valuable cost savings in the development of the joint industrial/commerce park; will allow ISP's to provide internet access to the tenants and businesses located at the Lynchburg Regional Airport; will allow ISP's to provide internet access to various existing businesses located along Wards Road; and, will be part of fiber optic system that will allow ISP's to provide internet access to Virginia's tobacco communities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG AS FOLLOWS:

ARTICLE I-PURPOSE

The purpose of this Franchise is to allow ISP's to provide internet access to property owned by the City of Lynchburg and Campbell County to make such property more developable by the City and County; to allow ISP's to provide internet access to the tenants and businesses located at the Lynchburg Regional Airport; to allow ISP's to provide internet service to businesses and other organizations located in the area; and, to facilitate the development of a fiber optic system to serve Virginia's tobacco communities.

ARTICLE II-TERM

The City does hereby award Mid-Atlantic a Franchise to construct, erect, install, lay, and thereafter use, operate, inspect, maintain, repair, replace and remove a fiber optic system, consisting of wires, cables, conduits, wireless communications equipment, shelters, generators and other related above ground and subsurface fixtures, equipment and facilities (collectively, the "Facilities") on property located at the Lynchburg Regional Airport as depicted on the plat attached hereto as Exhibit 'A' (the "Easement Area"), for a period of forty (40) years beginning on March, 2006 and ending on March, 2046. In addition to the initial forty (40) year term, the City and Mid-Atlantic may, at their option, agree to extend the Franchise for an additional term upon such conditions as are mutually agreeable to the City and Mid-Atlantic. It is the City's and Mid-Atlantic's intent to extend the Franchise for additional terms after the expiration of the initial term.

At the end of the Franchise period, unless a new Franchise has been negotiated, this Franchise agreement shall continue as a month-to-month tenancy, subject to all terms and conditions contained in this Franchise agreement. Such month-to-month tenancy shall continue until such time as the City gives Mid-Atlantic written notice of the termination of the month-to-month tenancy.

This Franchise may not be assigned by Mid-Atlantic in whole or in part without the prior written approval of the City, which approval will not be unreasonably withheld.

ARTICLE III-MID-ATLANTIC'S RESPONSIBILITIES AND RIGHTS

Mid-Atlantic is authorized to install an equipment shelter (with associated generator and air conditioning units) containing ladder racks to hold cabling, equipment racks to hold optical shelves, fiber termination panels, battery racks and rectifiers, and equipment racks for colocation gear, to serve as an access point for connections to the Mid-Atlantic Broadband Cooperative's 700-mile long fiber-optic network and for regeneration of the signal. The system will be an open access fiber-optic SONET system, with an OC-192 backbone and OC-3 connection. Mid-Atlantic is also authorized to install such other equipment as may be needed for the operation of its fiber-optic network.

Mid-Atlantic shall construct the Facilities at its sole expense in accordance with applicable laws and safety codes, and shall promptly repair any damage to the City's property resulting from such construction. The Facilities shall be maintained and repaired at the sole expense of Mid-Atlantic.

The Franchise granted hereunder includes the right of Mid-Atlantic to access the Easement Area as needed for exercise its rights hereunder with respect to the Facilities. Except for emergency work, Mid-Atlantic's access to the property shall be limited to normal business hours. Mid-Atlantic's rights of ingress and egress shall not unreasonably interfere with the current improvements that are located on the property or the City's use of the Property.

Mid-Atlantic may use the Easement Area for the purposes granted by this Franchise, provided that Mid-Atlantic's use does not interfere with or endanger the City's operation or maintenance of the Lynchburg Regional Airport or the Federal Aviation Administration's facilities that are located on the airport property. Mid-Atlantic shall at all times have the responsibility to keep the Easement Area clear of all trees, stumps, roots and undergrowth and shall have the further right to trim or fell any tree(s) outside the Easement Area which in the opinion of Mid-Atlantic constitute a hazard or may endanger the safe or proper operation of the Facilities.

Whenever the City determines that it is necessary in connection with the repair, relocation, or improvement of public facilities, the City may require by written notification that any of Mid-Atlantic's fiber optic facilities be relocated. Within sixty (60) days after receipt of notification, unless the City agrees to extend such period, Mid-

Atlantic shall relocate its facilities to such place and under such terms and conditions as specified by the City. Mid-Atlantic shall bear all expenses associated with the relocation except that the City will issue, without charge to Mid-Atlantic, any City permits that are required for the relocation of Mid-Atlantic's facilities. If Mid-Atlantic does not complete its relocation within sixty (60) days or such other period as authorized by the City, the City may take such actions as necessary to effect such relocation at Mid-Atlantic's expense.

Mid-Atlantic shall install four inter-duct pipes in the City-owned Easement Area. One inter-duct pipe shall be for Mid-Atlantic's sole use. Mid-Atlantic shall allow other telecommunications companies to occupy the remaining three inter-duct pipes. Mid-Atlantic shall be permitted to charge any telecommunications companies that use the remaining inter-duct pipes the standard and usual rental rates for such use.

ARTICLE IV-CITY'S RESPONSIBILITIES

The City represents to Mid-Atlantic that it is the lawful owner of the airport property and has the lawful authority to execute and deliver this Franchise to Mid-Atlantic. The City further agrees to execute such other documents, and take such further actions, as may be reasonably requested by the Mid-Atlantic in order to carry out the provisions of this Franchise.

ARTICLE V-COMPLIANCE WITH FEDERAL AND STATE RULES AND REGULATIONS

The grant of this Franchise is subject to all ordinances, resolutions and procedures of the City as the same now exist or may be hereinafter be adopted, amended, revised, or codified, in lawful exercise of any power granted to the City by the Virginia General Assembly or any other lawful body. This Franchise is also expressly subject to the approval of the Federal Aviation Administration and to all of the rules and regulations of the Federal Aviation Administration, and the City, at its sole expense, will take the appropriate steps to obtain and maintain the necessary approvals from the Federal Aviation Administration. Mid-Atlantic and the City, in performing their responsibilities under this Franchise will comply with all applicable state and federal laws and regulations.

This Franchise shall be construed in accordance with, and governed by, the laws of the Commonwealth of Virginia without regard to principles of conflicts of laws.

ARTICLE VI-AMENDMENTS TO FRANCHISE

The City and Mid-Atlantic may agree in writing to modify the Franchise at any time. Any significant changes in the Franchise must be approved by City Council.

ARTICLE VII-TERMINATION OF THE FRANCHISE

If there are instituted by or against Mid-Atlantic any proceedings in bankruptcy or insolvency during the term of this Franchise, the City may terminate the Franchise at any time thereafter. The exercise of this right by the City shall be in addition to and not in place of any other rights, which the City has under the terms of this Franchise. Any successors, or assignee or assignees, or trustee, or receiver of Mid-Atlantic resulting from proceedings in bankruptcy or under any insolvency law shall be subject to and bound by all of the provisions, terms, conditions, and limitations of this Franchise.

The City retains the right to withhold or withdraw any and all privileges under this Franchise and to terminate this Franchise at any time if there is a taking of Mid-Atlantic's assets by a court of competent jurisdiction. Exercise of this right by the City shall be in addition to and not in place of any other rights, which the City has under the terms of this Franchise.

ARTICLE VIII-INDEMNIFICATION

Mid-Atlantic shall indemnify, hold harmless and assume the defense of the City, its agents, employees, and officials, from any and all liability, expenses, or claims which may be recovered from, or sought to be recovered from the City, its employees, officials, and agents by reason of or on account of any property damage, injury or death of any person arising from the installation, maintenance and operation of the fiber optic facilities. In discharge of this obligation, Mid-Atlantic agrees, at its expense, to obtain and keep in full force and effect at all times during the term of this franchise, comprehensive public liability insurance in at least the amount of \$1,000,000, combined single limited coverage against general public liability for injuries to or death of persons or damage to property. Such insurance policies shall also name the City, its employees, officials and agents as insured parties. Mid-Atlantic shall furnish the City's Risk Management Division with a copy of said insurance policy or certificate showing the insurance coverage to be in full force and effect. Such insurance policy or certificate shall contain provisions providing that the City shall be given 30 days prior written notice of any cancellation or reduction in the required coverage. The insurance required hereunder shall be primary and any insurance or self-insurance maintained by the City shall be in excess of and shall not contribute with the insurance provided by Mid-Atlantic under this Franchise. Any deductibles or self-insurance retentions applicable to the required coverage shall be paid by Mid-Atlantic and the City shall not be required to participate therewith. All rights of subrogation against the City shall be waived. Each year this Franchise remains in effect Mid-Atlantic shall provide the City's Risk Management Division with a copy of a current insurance policy or a certificate of insurance showing the insurance coverage is still in full force and effect.

ARTICLE IX-USE OF PROPERTY BY FEDERAL GOVERNMENT

During time of war or national emergency, the City shall have the right to make any portion of the airport property available to the United States Government for military or national use. In such event any of the provisions of this Franchise that are inconsistent with the use of airport property by the United States Government shall be suspended.

This Franchise shall be subordinate to the provisions of any existing or future agreement between the City and the United States Government relative to the operation or maintenance of the Lynchburg Regional Airport, the execution of which has been, or may be required, as a condition precedent to the expenditure of Federal funds for the development of the Airport.

ARTICLE X-METHOD OF ACCEPTANCE

Any person, firm, corporation, or other entity bidding for this Franchise shall deposit with the bid its check in the sum of \$100.00, payable to the City as the security to the City that the Grantee shall accept the Franchise within thirty (30) after the adoption of the ordinance granting the same. Upon the failure of the Grantee to accept this Franchise pursuant to the provisions of this section, such Grantee shall forfeit this deposit to the City. The checks of all other bidders shall be returned upon the acceptance of the Franchise by the selected Grantee. The check will be returned to the successful bidder upon the execution of the Franchise.

This Franchise shall be and become effective and shall constitute a contract of Franchise between the City and Grantee when the Grantee shall cause a copy thereof to be signed by a proper official of the Grantee duly authorized thereto and under its corporate seal, duly attested to by an authorized official of the Grantee, accepting the terms and provisions of this Franchise on behalf of said Grantee.

Adopted: _____

Certified: _____
Clerk of Council

FORM OF ACCEPTANCE

The foregoing Franchise, as set forth in the ordinance adopted by the Council of the City of Lynchburg, Virginia on _____, 2006, is hereby accepted by Mid-Atlantic Broadband Cooperative according to the terms thereof for a period of forty (40) years beginning March, 2006 and continuing through March, 2046.

This acceptance is executed on behalf of Mid-Atlantic Broadband Cooperative by _____ and _____, its President and Secretary, respectively, this _____ day of _____, 2006, by virtue of authority duly and properly vested in them as officers of Mid-Atlantic Broadband Cooperative.

MID-ATLANTIC BROADBAND COOPERATIVE

By: _____

General Manager

Attest:

Secretary

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LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **January 24, 2006, Work Session**

AGENDA ITEM NO.:

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Mid-Atlantic Broadband Cooperative Proposal to Install Fiber Optic Infrastructure at the Lynchburg Regional Airport**

RECOMMENDATION: Agree to allow the installation of fiber optic infrastructure at the Lynchburg Regional Airport and authorize staff to start the process of granting a franchise to the Mid-Atlantic Broadband Cooperative for the lease of the node/hub site.

SUMMARY: The attached memorandum from Mike Davidson, Director of Economic Development for Campbell County provides background for this item. City staff is strongly supportive of having this telecommunications infrastructure installed at the airport. Its presence will enhance the marketability of both airport property and those properties owned by the City and Campbell County that are planned for development as a joint commerce park.

The City cannot grant a long term lease without going through the franchise process (similar to that done for the lease of the parking deck adjacent to the Holiday Inn Select). This, plus the added requirement for Federal Aviation Administration (FAA) approval, has created a time crunch for the installation of the infrastructure. Mid-Atlantic is willing to go ahead with plans for the installation with Council's indication of its willingness to grant the 40 year lease. Mark Courtney has already corresponded with the FAA and we do not anticipate a problem from that end.

Note: This process would have been greatly simplified if the property was owned by a regional airport authority rather than the City.

PRIOR ACTION(S): None

FISCAL IMPACT: No direct impact although positive economic benefit is expected to accrue from the availability of the broadband infrastructure.

CONTACT(S): Kimball Payne, 455-3990

ATTACHMENT(S): Memorandum from Mike Davidson dated January 13, 2006.

REVIEWED BY: lkp

INTER OFFICE MEMORANDUM

TO: Kim Payne, Lynchburg City Manager

FROM: Mike Davidson, Campbell County Director of Economic Development

SUBJECT: Mid-Atlantic Broadband Cooperative

DATE: January 13, 2006

BACKGROUND: The Virginia Tobacco Indemnification and Community Revitalization Commission (hereinafter referred to as Commission) recognized that internet connectivity is a vital infrastructure that is not widely available within the tobacco communities. The Commission has been exploring alternatives for several years and has established the Mid-Atlantic Broadband Cooperative to install fiber infrastructure to serve the tobacco communities. Mid-Atlantic will install, maintain, and own the fiber infrastructure and lease out availability to the system to last mile providers yet to be identified. The lease payments will partially fund the continued maintenance and operational costs of the fiber network. Tobacco communities have the ability to site facilities to serve industrial parks. Each tobacco community will obtain a node/hub site at no cost to the locality. Mid-Atlantic will fund the cost of fiber installation, maintenance, utilities, the necessary equipment, and cost of the building structure to house the equipment for the node/hub site. Tobacco communities must provide at no cost to Mid-Atlantic a site to locate the equipment for a period of 40 years. Campbell County has identified the area around the Lynchburg Regional Airport as a preferred site for the node/hub site to serve the joint industrial park when it is developed.

DISCUSSION: Original plans were to locate the node/hub site on joint industrial park property. Since the joint industrial park is not operational that alternative does not exist. In order to serve the joint industrial park when it is developed, we examined alternatives with the appropriate Lynchburg staff. This review process had been on-going since April of 2005. Property near the control tower was determined usable and determined that the location of a site would not negatively impact the airport operations. If this site is utilized fiber will also be placed down Training Center Road so when the industrial park is developed we can tie into the fiber and serve the joint industrial park. While no official construction estimate has been developed and considering the value of the servers and other equipment necessary to operate the fiber connectivity, the potential cost savings in joint industrial park development could run from \$75,000 to \$150,000. In addition to this benefit proposed location of the node/hub site can serve existing businesses on the airport property as well as up Wards Road. This site may even be able to serve Liberty University to provide connectivity to the new housing units on the east side of the 460 by-pass. The last mile provider will be responsible to run the infrastructure necessary to serve clients from the node/hub site at their cost.

Mid-Atlantic has contracted with Adesta, a local firm, to install the fiber in this area as well as install the node/hub sites. What will occur at the airport property is two fiber lines will be installed down the road to the control tower to provide redundancy, an approximately 20 X 20 pre-engineered structure will be placed on a pad site and the necessary equipment will be installed. The site will have an external back up generator to insure operability. There will be an access road and small parking area included in the site. In order to have the extra fiber access in the area to serve existing Lynchburg and Campbell County businesses and the future joint industrial park a site must be provided at no charge to Mid-Atlantic for a lease period of 40 years.

The benefits to locating the facility on city property is the extra connectivity for existing businesses on airport property as well as up Wards Road, allowing city business to benefit from infrastructure financed by tobacco funds, and deferring infrastructure costs for the future joint industrial park.

The site must be operational by May 31, 2006. We realize there are formal processes that have to be followed prior to committing to a lease agreement. We need to know by January 27, 2006 if City Council is willing to commit to the project with the understanding that there are processes that have to be completed. Adesta must have access to site by the end of February to mid March. If City Council does not desire to commit to the lease terms then an alternate site will have to be utilized.

RECOMMENDATION: Campbell County is requesting City Council consider a 40 year free lease for the Mid-Atlantic Broadband Cooperative to install a node/hub site at the Lynchburg Regional Airport.



FAA
Airports Division

Eastern Region

Washington Airports District Office
23723 Air Freight Lane, Suite 210
Dulles, Virginia 20166
(703) 661-1354

February 6, 2006

Mr. Mark F. Courtney, A.A.E.
Airport Manager
Lynchburg Regional Airport
4308 Wards Road
Lynchburg, VA 24502

Re: Install Prefabricated Building Foundation
Lynchburg Regional Airport
NRA Case No. 2006-AEA-13-NRA

Dear Mr. Courtney:

We have reviewed the proposed project under the authority of Federal Aviation Regulation FAR Part 77 and under requirements of the Master Agreement for the airport grant program. This review has considered the safety and utility of the aircraft operations and planned navigational aids as related to this proposal. Based on our review, we have "no objection" to the proposed project. Height of construction equipment will have to be individually evaluated during construction. If a temporary crane is utilized then the following conditions must be satisfied:

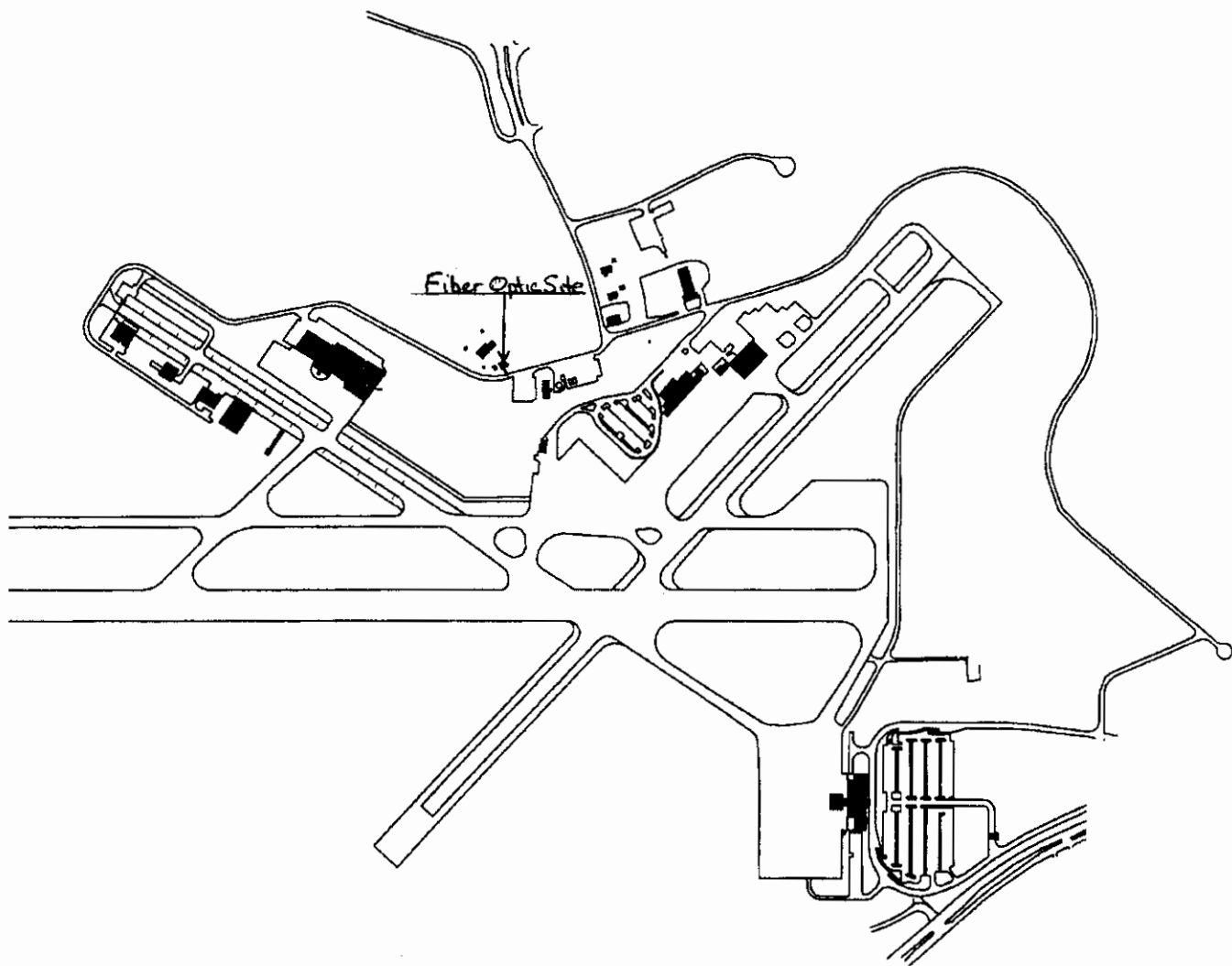
1. The crane must be appropriately marked and lighted in accordance with FAA Advisory Circular 70/7460-1.
2. The crane must be lowered to it's minimum feasible height when not in use.
3. The working area and height of the crane will be coordinated with airport operations and ATCT. Proper NOTAMS shall be coordinated and issued on a daily basis if necessary.

This proposed facility will need to be shown on the Airport Layout Plan and the proposed lease for this building and any ancillary facilities will need to be coordinated with this office and shown on the Airport's Exhibit "A" Property Map.

Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Chad Carper, Engineer
Washington Airports District Office



**Lynchburg Regional Airport
Mid-Atlantic Broadband Cooperative
Fiber Optic Node/Hub Site**

